89-1254

Supreme Court, U.S.
FILED
FEB 9 1990
JOSEPH F. SPANIOL, JR.
CLERK

No._____

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

THURMAN V. WHITFIELD,

Petitioner,

V.

THE COCA-COLA COMPANY,

COLIN A. TOPPER CAREW,

ALYCE C. SPROW,

GOLDEN GROOVE PRODUCTIONS, INC.,

NORMAN LEAR,

ACT III COMMUNISATIONS, INC.,

FREDERICK C. TIMM, ESQUIRE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

THURMAN V. WHITFIELD

5024 Cedar Avenue

Philadelphia PA 19143

(215) 747-4854 Pro Se

5 PP

QUESTIONS PRESENTED

1. Whether the Third Circuit Court of Appeals erred in ignoring its own precedent, affirmed by this Court, establishing the criteria for a RICO complaint.

2. Whether the Third Circuit Court of Appeals erred in sanctioning the lower Court when it dismissed as frivolous plaintiff's allegations of tampering, suppression with non-filing of court records denying him due process, in violation of the Fourteenth Amendment to the Constitution.

3. Whether the Third Circuit Court of Appeals erred in ignoring allegations of continuous tampering and manipulation by clerk's orders, violations of Court Rules and the Internal Operating Procedures of the Third Circuit, all being so far departed from the accepted and usual course of judicial procedure.

4. Whether the Third Circuit Court of Appeals ignored tampering in two district courts calling for this Court's power of supervision.

LIST OF ALL PARTIES

The parties in the Court of Appeals for the Third Circuit were:

Thurman V. Whitfield,

Appellant, Plaintiff in the district court, Petitioner in this petition,

The Coca-Cola Company,

Colin A. Topper Carew,

Alyce C. Sprow,

Golden Groove Productions Inc.,

Norman Lear,

Act III Communications Inc.,

Frederick C. Timm, Esquire,

Appellees and Defendants in the district court.

Petitioner, Thurman V. Whitfield is not affiliated with any parent or subsidiary company.

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OPINIONS BELOW

The opinion of the Eastern District of Pennsylvania appears as "Appendix A" hereto. The opinion of the United States Court of A ppeals for the Third Circuit appears as "A-ppendix A1" hereto.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on December 22, 1989. Stay of mandate as "Appendix "A2 below.

This Court's jurisdiction is invoked, pursuant to 28 U.S.C. Section 2101 (c).

STATUTES INVOLVED

The sections of the Racketeer Influenced Corrupt Organizations Act (RICO), 18 U-S.C. Sections 1961, 1962 and 1964 which this case involves are: 1961(4) and(5); 1962, and 1964(a) and(c), and 1341, 1343.

The sections of the Civil Rights Act, involved in this case are: 42 U.S.C. 1981, 1983 and 1985.

U.S.C. Constitutional Amendment 14, Sec. 1.

"AMENDMENT XIV; CITIZENSHIP, PRIVILEGES AND IMMUNITIES; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shamake or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall, any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

On March 19, 1979, petitioner Thurman V. Whitfield, a writer, broadcaster and producer of radio and television programs mailed a script entitled Boomerang to Norman Lear, at Tandem Productions in Los Angeles, California., with a mailgram suggesting a television series.

In May, 1980, a TV series produced by an unknown minority production company, Rainbow TV Workshop Inc., with Norman Lear as Consultant and a former minority (Black) student, Colin A. Topper Carew, named as president of an alleged "minority front racketeering enterprise" (Carew studied at Tandem Productions) and subsequently plaintiff Whitfield filed his complaint alleging Theft Of Idea in Rainbow TV Workshop's production of its first series entitled The Rightous Apples. Plaintiff filed his complaint in the Eastern District of New York, naming defendants, Norman lear, Tandem Productions, TAT Communica-

tions, Topper Carew and Rainbow TV Workshop Inc. (hereinafter "EDNY-1").

In March, 1984, defendants were granted summary judgment and when plaintiff's attorney refused to appeal he was forced to act pro se and the decision was reversed in the Second Circuit Court of Appeals on December 14, 1984, 751 F.2d 90.

On March 14, 1985 at conference defendants moved to file a second summsry judgment motion and it was granted again by Judge I. Leo Glasser. Defendants stated that they would move within thirty days, but deliberately delayed for seventeen months, and filed their motion on August 14, 1986.

After three years and three months, on November 28, 1989, Judge I. Leo Glasser again granted defendants summary judgment which was appealed on December 18, 1989. During those prior three years above, plaintif became the object of a "vicious attack" of tampering and after filing documents in pr-

otest and writing letters to Clerk Robert C. Heinemann, Judge I. Leo Glasser and to Cheif Juge Jack B. Weinstein (twice) he was forced to file a complaint in the Southern District of New York naming the defendants in EDNY-1, and Clerk Heinemann of the Eastern District of New York, defendants attorney, Stephen F. Huff, Pryor, Cashman, Sherman & Flynn, also, plaintiff's former attorney, Carl E. Person.

The complaint alleged racketeering activities (RICO), Civil Rights violations, which after negotiations with attorney Huff all parties signed a dismissal on January 8, 1988 (hereinafter SDNY-1).

Plaintiff moved back to Philadelphia, PA and in obtaining further information a complaint was filed adding a new defendant to an ongoing and continuous pattern of racketeering conspiracy. The complaint was filed alleging Civil Rights and RICO violations , August 16, 1988, and defendant request to chan ge venue to Judge Glasser in the Eastern Di-

strict of New York the case was transferred on December 14, 1988 (hereinafter EDPA-1).

On June 5, 1989, while EDPA-1 was being held in abeyance (at defense attorney's request) in the EDNY, plaintiff filed the instant suit (hereinafter EDPA-2) that alleged RICO and Civil Rights violations pursuant to 28 U.S.C. Sections 1341 and 1346, also 42 U.S.C. Sections 1981, 1983, and 1985, with RICO allegations pursuant to 18 U.S.C. Sections 1961, 1962 and 1964 (racketeer organizations jurisdiction).

Defendants above are The Coca-Cola Company, (Norman Lear sold Tandem Productions to their entertainment division in June, 1985) ; Defendant Colin A. Topper Carew with his partner Alyce C. Sprow (abandoned Rainbow TV Workshop Inc.) and with capitol from that "racketeering enterprise" they formed, Defendant Golden Groove Productions; Defendant Act III Communications Inc. (formed by Norman Lear) and Frederick C. Timm, Esquire

REASONS FOR ALLOWING THE WRIT

SUMMARY

Plaintiff filed the instant suit on June 5, 1989, and it was dismissed as "frivolous" on July 25, 1989. "Appendix A". Plaintiff, pursuant to Rules of the Third Circuit, Court Rule 8(4) Notice To Trial Judge; Opinion In Support Of Order, plaintiff sent Judge Giles a copy of his Notice of Appeal with a letter dated August 9, 1989, which pursuant to this rule states that the trial judge, may file and mail a written opinion or written amplification of a prior ruling or opinion, to the parties.

No opinion was written or mailed by the district court to the parties after it apparently concluded that there was no issues of material fact although plaintiff submitted a factual account of an ongoing conspiracy that extended from the EDNY into the EDPA court records showing non-filing, of plaintif,-

f's pleadings, suppression and tampering that became rampant after he began acting pro-se.

The reasons for allowing this writ chronologically began after plaintiff was granted a reversal in December, 1984, at the Second Circuit Court of Appeals in EDNY-1. The tampering suppression and non-filing of plaintiff's duly filed legal documents is clear and specific on the docket, which relevant parts are submitted as "Appendix B".

When plaintiff was forced to seek justice by filing a complaint in the SDNY on September 1, 1987 alleging RICO (racketeering activities) and Civil Rights violations the manipulations with his pleadings continued when a second complaint was submitted to the court, twenty five days later on September 25, 1987, by persons unknown which was naturally dismissed and the defendants have raved about this set-up dismissal ever since. This was the second, District Court in which these unusual activities had occurred.

When plaintiff filed a complaint after he moved back to Philadelphia, PA naming new activities and a new defendant in what was clearly emerging as a continuous, ongoing racketeering conspiracy, engaged in by associates, and agents of the racketeering enterprise, Rainbow TV Workshop Inc., created by Norman Lear, with his minority front Colin A. Topper Carew, defendants in EDNY-1, the conspiracy continued.

Plaintiff filed his complaint, EDPA-1 seeking due process from the conspiracy prevalent in the clerical processing evident in this, the third United States District Court in which he sought justice, and plaintiff is convinced that if it were not for his race (Afro)and his economic status this racketeering activity, deliberately perpetrated against the law, rules and integrity of the United States Federal Courts, would never have been dared.

EDPA-1 was filed on August 16, 1988, alleging RICO and Civil Rights violations committed by defendants in EDNY-1, and Clerk Heinemann of

the EDNY, attorney Stephen F. Huff of Pryor, Cashman, Sherman & Flynn in New York, (still representing defendants in all litigations), also Alyce C. Sprow, partner in Rainbow, and plaintiff's former attorney Carl E. Person.

When EDNY-1 was filed on June 4, 1981 a summons with the complaint listed the Judge, as Judge Costantino and the Clerk as Richard H. Ware. After plaintiff's complaint had been pending for six or seven months a new Clerk of Court was assigned and he was, Robert C. Heinemann and at that time approximately, two thousand cases had been filed since this plaintiff's, but clerk Heinemann reached back, over all 2000 cases and re-assigned plaintiff's case to the new judge, Judge I. Leo Glasser, and plaintiff pondered, why would clerk Heinemann personally select this case when he had hundreds that were filed after it to choose from?

Specific acts of tampering, non-filing, are from the docket thereto as "Appendix B".

In appendix "B" docket no. 70, it states that plaintiff sent a letter to clerk Heinemann dated 4/23/85, re: missing documents: 1,5 31, 32, 35, exhibit 10 & exhibit 1a, etc.

The above docket entry is incorrect, as so many throughout these litigations are. The letter was sent by certified mail with return receipt signed dated and returned. The correct mailing date (on the certified receipt was April 23, 1984, NOT 1985, and the correct date on the return receipt was, April 24, 1984, NOT April 23, 1985, "Appendix B".

Clerk Heinemann wilfully and deliberately suppressed this certified document listing seven (7) legally filed and docketed documents missing from the file. Plaintiff has submitted copies of the certified and return receipts in the appellant's appendix in this instant suit, and has no way of typing it for a submission herein, but every allegation within this petition is supported by the exhibits from the record, "Appendix B" docket no. 70.

Plaintiff has elaborated on the activity, of clerk Heinemann that precipitated the continuous, ongoing racketeering activities, by associates and agents acting under titles of clerk and law clerk in the corrupt processing of plaintiff's pleadings, even permeating this instant suit.

After plaintiff filed the complaint June 5, 1989, defendants litigated this action c/o Robert A. Nicholas of the firm, Reed, Smith, Shaw & MCClay a well known Philadelphia law firm with offices on the east coast, including Washington, DC.

In the course of the eight years plaintiff's original action has been in litigation, he has terminated three attorney's, that were grossly negligent and inept in mis-representing plaintiff and he is firmly convinced, by the record, that this was insidious, and deliberate causing plaintiff to act prose and when parties in all related cases became aware of plaintiff's diligency they in-

cluding attorney defendant Stephen F. Huff and his firm realized that plaintiff would not retain another attorney that left them only the records and the clerk's, standing between this plaintiff and the due process of law.

Plaintiff's complaint in this instant suit alleges fraud, conspiracy and non-filing or docketing affidavits in opposition to defendants motion to dismiss (2), manipulation of time by law clerk Feldman, ignoring or non submission of motion for default after a 59 day and 76 day non-response to the complaint filed August 16, 1988, and responded to on October 14, 1988, by clerk Heinemann, and all other defendants (except Carl E. Person) on October 30, 1988.

Plaintiff filed an affidavit in opposition to clerk Heinemann's motion for a dismissal or change of venue, with a memorandum of law on October 27, 1988, plai-

ntiff filed an affidavit in opposition and memorandum of law on November 15, 1988 with Statement Rule 9(g) (except Carl E. Person). Mr. Person filed a timely answer and countersuit. "Appendix C".

All filings to the court must also be copied to the U.S. Attorney who by law must represent court clerk Heinemann. Plaintiff filed all documents by hand, and so filed his affidavits(2) in opposition and they were stamped dated and received when filed at the court and U.S. Attorney office.

Plaintiff's memorandum of law on October 27, 1988 was docketed on that day.

Plaintiff's memorandum of law on November 15, 1988 was docketed that day.

Plaintiff's affidavit in opposition, October 27, 1988, was not docketed at all

Plaintiff's affidavit in opposition, November 15, 1988 was not docketed at all and all of the above were hand delivered.

When plaintiff saw the docket some time later and asked clerk Washington why his two affidavits were not filed or docketed and she said she would ask her supervisor.

Plaintiff's affidavit filed on November 15, 1988 was 56 pages thick, and if both affidavits are not docketed and filed, then how will the court even know that they exist?

When plaintiff called clerk Washington, at the end of November she said that her supervisor instructed her to file the November 15, 1988 affidavit as 8a and still date it the 15th, although it was actually filed and docketed just prior to the date December 2nd and no. 21 on the docket, but it would never have been filed or docketed if plaintiff had not looked at the docket.

All other affidavits on the docket that have been submitted are correctly filed, and docketed, except no.10, October 27, 1988 and numbers 17, 18, both dated November 15, 1988 and both were never filed at all. All of this

is clear and specific on the docket "Appendix C". After the dismissal as frivolous, plaintiff timely filed his Notice of Appeal in the, Eastern District of Pennsylvania.

Appellant filed his timely brief and appendix in the Third Circuit Court of Appeals, on September 25, 1989, and appellees submitted their brief which was stamped received and filed 10-24-89, and beneath the date, the stamped name, Sally Mrvos Clerk on the cover.

On October 27, 1989, (two days after appellants appendix was filed) appellees submitted a motion to file a supplemental appendix together with the brief of Appellees . The motion was granted and ordered on the same date that it was received by Sally Mrvos, Clerk of Court. "Appendix D". (the clerk's order is stamped on appellees motion and cannot be reproduced here but is in the record).

The question herein is, how can clerk Mrvos issue an order on October 27, 1989, knowing the brief has already been stamped rece-

ived and dated on October 24, 1989 by Sally Mrvos, Clerk?

Appellees motion was a ploy to legalize their order from the clerk to file s - Supplemental Appendix which was included - in Clerk Mrvos order of October 27, 1989.

Plaintiff filed an Affidavit in Opposition on October 30, 1989: To Reconsider, Order By Clerk Granting Appellees Motions, To File a Supplemental Appendix And To Strike Appellees Brief. This motion was decided by Clerk Mrvos and stated that the order would not be modified. "Appendix E".

The plaintiff's affidavit, not a procedure, Clerk rendered a procedural order.

Rule 11(5) Court Rules of the Third Circuit states generally; Any motion, which can ordinarily be disposed of by a single judge of this court under Rule 2-7 (c) Federal Rules of Appellate Procedure and Court Rule 2(4), may be disposed of by the clerk, provided it is procedural or

to the preparation or printing of the appendix, etc.

Rules of the Third Circuit, Court Rule, 2(4) states, generally; A single judge of the court may...grant or deny any request for relief which under...Federal Rules of Appellate Procedure may be sought by motion except that a single judge may not dismiss or otherwise determine an appeal, etc.

Appellants motion to Strike The Appellees Brief, was not in the clerk's authority, as Court Rule 2(4) states: a single judge or clerk may not dismiss or otherwise determine an appeal. To decide on Striking The Appellees Brief, is determining and/or dismissing the appellee.

The clerk's order granting appellees motion to file a supplemental appendix was not a procedural order.

Appellant filed his brief and appendix, together and the appendix was the entire district court record leaving no supplemental

appendix to file because appellant had filed the entire record.

Rules of the Third Circuit, Court Rule 10 (3) Contents Of Appendix states in part; As required by Rule 30(a) of the Federal Rules of Appellate Procedure, appellant shall...file an appendix....which shall contain (1) docket entries....(2) relevant portions of the pleadings.....(3) the judgment order or decision.....(4) any parts of the record to which the parties wish to direct the.....attention of the court.

Appellees, by Clerk's order, submitted seventeen (17) pleadings in their supplemental appendix, fifteen (15) of them from three different forums with defendants that are not parties in this action.

Appellant cannot appeal that which was never heard in the lower court, and Federal Rules of Appellate Procedure, Rule 30, clearly states: An appendix is a collection of important court documents, which were

filed in the district court. It is the duty of appellant to reproduce important documents in the district court record, FRAP Rule 30.

Appellant pondered as to why appellees waited until after his appendix was submitted before filing a motion to submit a vexatious and false supplemental appendix, and why clerk Mrvos order "Appendix E", stated, that appellant concedes that the documents, in appellees supplemental appendix are from the record in the district court which is totally false.

Appellant herewith submits the list of the table of contents from appellants appendix, "Appendix F", for comparision to the table of contents from appellees supplemental appendix, "Appendix G" hereto, for comparision.

After appellants affidavit in opposition and motion to strike were not answered, he received a copy of clerk Mrvos order da-

ted November 6, 1989, stating that motions, and affidavits on both sides would be submitted to a merits panel, which seemed a bit late since clerk Mrvos had already granted, their motion on October 27, 1989, "Appendix H".

On November 17, appellant went to the, clerk's office to review the docket and file. He was given the docket and the appellees brief and supplemental appendix, but he was given only the appellants brief, and no appendix.

Appellant talked to the clerk named Sandy and staff attorney Runco, who both searched for at least twenty-five minutes and could not find one copy of appellants four (4) submitted appendices not even the file copy.

The clerk finally said that clerk Yale Roth sent word, the record is before the court, and appellant asked, how can the file copy be before the court? This also contra-

dicts the clerks order of November 6, 1989, granting appellees seven days from the date of order (November 6, 1989) to serve their, brief and supplemental appendix on appellant, which would be November 13, 1989, further granting appellant fourteen-days in which to file a reply brief, which would expire on November 27, 1989. "Appendix H", so, how can the record be before the court, and appellants file copy missing, on November - 17, 1989, ten (10) days before his reply brief was due?

The specter of this continuous ongoing racketeering activity, by agents and/or - associates of defendants appeared to be evident in this appeal so pursuant to Internal Operating Procedures of the Third Circuit Court of Appeals, Chapter 10, Motion Practices A(2) it states; When an emergency motion is presented which the movant represents as requiring panel action on the same - day as the motion is filed, the movant may,

be directed by the Clerk to deliver by hand copies of the moving papers that day to each member of the Standing Motions Panel ("SMP") designated by the clerk at the chambers where the judge is stationed or at such other place as may be designated, appellant drew up an "emergency motion".

After appellees had been granted leave by two (2) clerk's orders to file their motions, and appellant had no decision toward his; Affidavit In Opposition to Appellees - Motion to file Supplemental Appendix, filed October 30, 1989; Motion to Reconsider order By Clerk and to Strike Appellees Brief, filed November 2, 1989, and; Motion for Sanctions, Damages and Double Costs for Unreasonable and Vexatious Inclusion of Unnecessary Materials in their Supplemental - Appendix, pursuant to F.R.A.P. Rules 27 (-a)(b), 30(b), and Rule 38, filed on November 22, 1989, appellant went to the clerks office on December 11, 1989 to file an Em-

ergency Motion pursuant to Internal Operat ing Procedures, Chapter 10, A(2) Motion P-actices, but was informed by Ms. Runco th-at he could not hand-deliver the motion as the above Chapter specifies, but must sub-mit it to her. Appellant left the office.

After deciding that the motion would, at least, be in the record he filed it one week later on December 18, 1989. "Appendix I", hereto.

As of this date, appellant's Emergen-cy Motion did not receive any decision al-though Motion Practices, Chapter 10 A(2) specifies as: "requiring panel action, the same day".

I. In Sedima this Court specified that i-ndividual predicate racketeering acts, form the basis for RICO claims, Sedima, S.P.R.L. v. Imrex Co., Inc., _____U.S._____, 105 S.-Ct. 3275 (1985).

Further in Sedima, this Court held th-at "a RICO plaintiff need only trace its i-

njury to a RICO predicate act which is part of a pattern of such acts committed in connection with the conduct of an enterprise."

Appellants complaint alleged the RICO enterprise as Rainbow Television Workshop, Inc., created by Norman Lear and Colin A.-Topper Carew as the minority "front" president in order to procure federal funding.

Sedima interpreted RICO as imposing severe remedies for injuries caused by individual RICO predicate acts when the actions are in a "pattern" by "individuals associated in fact."

A RICO plaintiff must show that the injury was caused by an individual RICO predicate act committed by an individual "associated in fact" with others in a "pattern" of predicate acts.

As in any allegations in a petition to this honorable Court, there must be a "basis in fact" and during eight years of litigation the basis for these predicate acts,

has become explicitly clear and factual, and verified in the records of all litigation since the original action, EDNY-1, filed on June 4, 1981, and they shall be chronologically submitted further on.

II. STANDARD OF PROOF

The proper standard of proof in civil actions under the Racketeer Influenced and Corrupt Organizations Act is preponderence of the evidence, the U.S. Court of Appeals for the Seventh Circuit holds, dismissing, defendants assertion that civil RICO proceedings are quasi-criminal in nature and, therefore, require a higher standard of proof. The court cites Herman & Maclean v. Huddleston, 459 U.S. 375, 51 LW 4099 (1983), in which the U.S. Supreme Court declined to require proof by clear and convincing evidence in a civil securities fraud action.

A grant of dismissal or summary judgment must be reversed unless when upon re-

view of the record the court finds that no genuine issue as to any material fact exists for trial and that the moving party is entitled to dismissal or summary judgment as a matter of law. See, Metzger v. Osbeck, 841 F.2d 518, 519 (3d Cir. 1988).

The Third Circuit Court of Appeals in Seville Industrial Machinery Corp. v. Southmost Machinery Corp., 742 F.2d 186 (3d Cir. 1984), cert. denied, 469 U.S. 1211 (1985), flatly held that elements of proof, do not have to be pleaded to state a cause of action in a RICO complaint, under the modern federal rules, it is enough that the complaint put the defendants on notice, of the claims against them. It is the function of discovery to fill in the details, and of trial to establish fully each element of the cause of action, Id, at 790.

The district court dismissed, and the Third Circuit affirmed as "frivolous", all of plaintiff's RICO and Civil Rights claim-

s and he should have been allowed discovery into defendant's practices and a chance - to amend, especially where plaintiff has set out "a general scheme" that violates RICO and Civil Rights statutes.

The obvious disregard of all evidence, favorable to plaintiff is evident by the fact that eight (8) pleadings from two separate defendants and the plaintiff were read and analized by clerk Feldman (new law clerk to Judge Giles) in two and one-half 2½, working days, and dismissed as frivolous.

III. DUE PROCESS AND CIVIL RIGHTS

This Court has previously determined, that the right of access to the courts, is to be afforded due process protection. Boddie v. Connecticut, 401 U.S. 371, 377, 91 S.Ct. 780. 785, 28 L.Ed.2d 113 (1971) and, Armstrong v. Manzo, 380 U.S. 545, 522, 85-S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). In Boddie, this Court recognized that in situations where the state has a "monopoly",

on the manner in which a dispute by law can be resolved, through the courts, due process protections apply to the right of access to the courts.

Persons forced to settle their claims, through the judicial process must have their opportunity to be heard, at a meaningful place, therefore, petitioners right of access to the courts is afforded, due process protection by the 14th Amendment.

Due process is not a technical conception, it is flexible and calls for procedural protections as each situation calls for Matthews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976). In order to determine the dictates of due process, three distinct factors must be considered: the private interest affected by state action; the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and,

governments interest, including the burdens that any additional or substitute procedural requirement would entail. 42 U.S. at 335, 96 S.Ct. at 903.

If the words state and government could be changed to "clerical malpractice it would aptly apply to this petition.

The basic facts evidently clear and docketed allege an ethnic and proffessional bond that supersedes the law, Court Rules and the authority of the federal court.

This contemptible racism and bias begun by a small "cabal" in New York have created their private "Fiefdom" in New York and Philadelphia and purportedly control litigation specifically against disenfranchised minorities such as this petitioner (Afro).

These blatant and continuous racketeering acts have a common base, beginning, with; Heinemann, Clerk of the EDNY, whose "tampering is clearly docketed.

HUFF, and Pryor, Cashman, Sherman & ynn, defendant Lear's attorney's, and R-ICO defendants in EDPA-1.

BURGHARDT, Clerk of the SDNY ignored plaintiff's letter and persons unknown fi led a second complaint, that was, naturally dismissed, see page six, paragraph 2.

FELDMAN, (new) law clerk to Judge G-in EDPA. Defendants would not respond to complaint for 79 days, until Feldman was appointed, see page 26 paragraph 2

WASHINGTON, docket clerk, no docketing or filing of two (2) affidavits in opposition hand delivered, dated and stamped received on October 27 and November 15, 1988, "Appendix C" and pages 12-14 hereto.

MRVOS, Clerk of the Third Circuit Court of Appeals whose orders granting appellees motions violated Court Rules, non submission of appellant's "Emergency Motion" dated received on December 18, 1989.

The questions before this Court are many and complex in this petition relating allegations of clerical malpractice, in two different forums is indicative of the arrogant disdain by appellees for any law or rule that does not bend to feed their neurotic arrogance and financial greed.

The foregoing activities, specifically related in the lower court records, warrant the exercise of this Court's discretionary powers, and this petitioner, with how many others cannot obtain relief in any other form or any other court.

CONCLUSION

For the foregoing reason a writ of Certiorari should issue to the Court of Appeals for the Third Circuit.

Respectfully submitted,

Thurman V. Whitfield

Pro Se

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing Petition For A Writ of Certiorari is expressed by United States mail, postage prepaid this 1st day of February, 1989, to the following:

Jamie M. Brickell
Pryor, Cashman, Sherman
& Flynn
410 Park Avenue
New York, NY 10022

Thurman V. Whitfield
5024 Cedar Avenue
Philadelphia PA 19143
(215) 747-4854

Sworn to and subscribed before me
this 31 day of July 1990

NOTARIAL SEAL
BERNARD Z SCHANTZER, Notary Public
City of Philadelphia, Phila. County
My Commission Expires May 8, 1990

APPENDICES

"APPENDIX A"

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THURMAN V. WHITFIELD : CIVIL ACTION

V. :

THE COCA-COLA COMPANY, ET AL : NO. 89-4299

ORDER

AND NOW, this 25th day of jult, 1989, upon consideration of defendants motions to dismiss and the responses thereto, it is hereby ORDERED that the motions are GRANTED.

1. Defendant Frederick C. Timm has moved to dismiss the charges against him. This motion is Granted, and plaintiff's complaint against Frederick C. Timm is DISMISSED as frivolous.

2. The remaining defendants, including the Coca-Cola Company, Topper Carew, Alyce Sprow Carew, Golden Groove Productions, Inc., Act III Communications, Inc. and Norman Lear, have also moved for dismissal. This motion is GRANTED and plaintiff's complaint ag-

ainst these defendants is DISMISSED as frivolous.

3. The motions of defendants The Coca-Cola Company, Topper Care, et al., for Rule 11 sanctions is DENIED.

BY THE COURT:

JAMES J. GILES
J.

"APPENDIX A1"

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 89-1667

WHITFIELD, THURMAN V.,
Appellant

v.

CAREW, COLIN A. TOPPER
SPROW ALYCE C. and
GOLDEN GROOVE PRODUCTIONS, NC.
LEAR, NORMAN and ACT III
COMMUNICATIONS, INC. and
TIMM, FREDERICK C., ESQUIRE

Appeal from the United States District Court for the Eastern District of Pennsylvania

(D.C. Civil Action No. 89-4299)

District Judge: Hon. James T. Giles

Submitted Under Third Circuit Rule 12(6)
November 24, 1989

Before: HIGGINBOTHAM, MANSMANN and COWEN,

District Judges.

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment

of the district court be and is hereby AFFI-RMED.

Cost taxed against appellant.

BY THE COURT,

A. LEON HIGGINBOTHAM
Circuit Judge

Attest:

M. ELIZABETH FERGUSON

DEC. 22, 1989

"APPENDIX A2"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 89-1667

THURMAN V. WHITFIELD, Appellant

vs.

THE COCA-COLA COMPANY, et al.

Pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, it is ORDERED that issuance of the certified judgment in lieu of formal mandate in the above cause be, and it is hereby stayed until February 11, 1990

A. LEON HIGGINBOTHAM

Circuit Judge

Dated: JAN 4 1990

"APPENDIX B"

Civil docket continuation sheet

Plaintiff		Defendant	
WHITFIELD, THURMAN V.		Lear, Norman et al	
DATE	NO.	PROCEEDINGS	Docket No.81-1824
1985			
3-7	58	Letter dated 3/7/85 from pltff. to Glasser, J., enclosing copies of documents numbered 1,5,13 &50. (for more info. see letter)	
"	"		
"	"		
6-20	70	Letter dated 4/23/85 from pltff. to Mr. Heinemann, Clerk of Court re: missing documents: 1,5,31,32 35, exhibit 10 & exhibit 1a (for more info. see letter, etc.	
"	"		
"	"		
8-16	73	Ltr. fr. pltff. dtd 8/16/85 to Clerk of Court re: missing 9 scripts (Rightous Apples) filed.	
8-20	74	Ltr fr pltff dtd 3/14/85 to Judge Glasser re: missing documents.	

"APPENDIX C"

DATE	NR	PROCEEDINGS | 88-6307 (JG)
1988		
OCT		
"	"	
"	"	
10	27	Plff's memo of law in opposition to deft's motion to dismiss or change venue, filed.
NOV		
17	15	Pltff's statement pursuant to, General Rule 9(g), filed.
18	15	Pltff's memorandum of law in opposition to deft's motion to dismiss or change venue to the Eastern District of New York, filed.

"APPENDIX D"

UNITED STSTES CIRCUIT COURT
THIRD CIRCUIT COURT OF APPEALS

THURMAN V. WHITFIELD, Appellant, -against- THE COCA-COLA COMPANY, ET AL Appellees.	No. 89-1667

PLEASE TAKE NOTICE that upon the annexed affidavit of Jamie M. Brickell, Appellees The Coca-Cola Company, Topper Carew, Alyce S Carew, Golden Groove Productions, Inc., Norman Lear, Act III Communications, Inc. (hereinafter collectively "Appellees") hereby, request leave to file a Supplemental Appendix together with the Brief of Appellees.

Yours truly,

Pryor, Cashman, Sherman & Flynn

By: Jamie M. Brickell
Attorneys for Appellees

410 Park Avenue

New York, New York 10022

"APPENDIX E"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 89-1667

WHITFIELD, THURMAN V., Appellant

v.

THE COCA-COLA COMPANY, et al.

(E.D. of Pa. D.C. Civ. No. 89-4299)

To: Clerk

1 Affidavit in Opposition to Appellees Motion to file a Supplemental Appendix

---

The foregoing Affidavit in Opposition is noted. Since appellant concedes in the Affidavit that the documents in appellees supplemental appendix are of record in the district court, Affidavit in Opposition at paragraph 13, the Clerk's October 27, 1989 order will not be modified.

In the event that costs are taxed against the appellant at the conclusion of the appeal, this is without prejudice to the filing of objections based on the necessity of repr-

"APPENDIX E"

oducing the documents included in appellee's appendix.

For The Court

SALLY MRVOS, CLERK

Dated: October 31, 1989

ND/cc: Mr. Thurman V. Whitfield
Jamie M. Brickell, Esq.
Frederick C. Timm, Esq.

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August 10, 1987 letter withdrawing Motion to Amend

August 12, 1987 Complaint by Whitfield in the Southern District of New York

September 25, 1987 Memo and Order by Brieant J of the Southern District of New York

January 8, 1988 Stipulation and Order of Dismissal in the SDNY (agreed to by all)

January 8, 1988, letter to Whitfield

August 16, 1988 Complaint by Whitfield in the Eastern District of Pennsylvania

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June 2, 1989 Complaint by Whitfield in the Eastern District of Pennsylvania

July 25, 1989 Order by Giles J. of the Eastern District of Pennsylvania

TOTAL, 127 Pages

"APPENDIX H"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

89-1667

WHITFIELD, THURMAN V. Appellant

vs.

THE COCA-COLA COMPANY, et al

(E.D.C. of PA Civ. No. 89-4299

To: Clerk

1) Appellant's Motion to Reconsider and to Strike Appellee's Brief and Supplemental Appendix

---

The foregoing Motion together with the Appellee's Motion for Leave to file a Supplemental Appendix, the Appellant-'s Affidavit in Opposition and the Clerk's October 27, 1989 and October 31, - 1989 orders are referred to the merits panel for review and consideration of - the new matters.

Pending disposition of the Motion,

"APPENDIX H"

the appellees are directed to serve a copy of their brief and the supplemental appendix on the appellant within (7) seven days of the date of this order and to file within that time a certification that, such service has been made. Appellant's reply brief, if any, shall be filed within fourteen (14) days of service of the brief and appendix.

For The Court

SALLY MRVOS

Dated: November 6, 1989 Clerk

GT/cc: Thurman V. Whitfield

Jamie M. Brickell

Frederick C. Timm, Esquire.

"APPENDIX I"

IN THE UNITED STATES COURT

OF APPEALS FOR THE THIRD CIRCUIT

THURMAN V. WHITFIELD, Appellant, vs. THE COCA-COLA COMPANY, et al Appellees.	No. 89-1667 NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the annexed affidavit of THURMAN V. WHITFIELD Appellant, pursuant to Federal Rules of Appellate Procedure, Rule 27(a)(b) and (c), Rule 30(b) and Rule 38, and also pursuant to Rules of the Third Circuit, Court Rule 2(4) and 11(5) he respectfully requests that sanctions, double damages and costs be imposed upon appellees for "Fraud Upon The Court", the inclusion of unnecessary materials in a supplemental appendix that was, unreasonable, vexatious, and included complaints from other forums naming other de-

fendants such as appellees New York attorney's, and the statements with factual documents herein strongly indicate that this "fallacy was perpetrated under the cover - of "Bait and Switch" for the main purpose, of "Tampering", with the official records, submitted in this appeal.

Dated: December 11, 1989

THURMAN V. WHITFIELD
5024 Cedar Avenue
Philadelphia, PA 19143
(215) 747-4854, Pro Se

FILED
MAR 2 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1254

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

THURMAN V. WHITFIELD,

Petitioner,

– against –

THE COCA-COLA COMPANY, COLIN A. (TOPPER) CAREW, ALYCE S. CAREW, GOLDEN GROOVE PRODUCTIONS, INC., NORMAN LEAR, ACT III COMMUNICATIONS, INC. and FREDERICK C. TIMM, ESQ.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STEPHEN F. HUFF
Counsel of Record
PRYOR, CASHMAN, SHERMAN & FLYNN
JAMIE M. BRICKELL
On the Brief
Counsel for Respondents
410 Park Avenue
New York, New York 10022
(212) 421-4100

BEST AVAILABLE COPY

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No. 89-1254

IN THE

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OCTOBER TERM, 1989

THURMAN V. WHITFIELD,

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– against –

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Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINIONS BELOW

A reproduction of the July 25, 1989 Opinion by the United States District Court for the Eastern District of Pennsylvania dismissing the instant action is set forth in the Appendix to the Petition as "Appendix A". A reproduction of the December 22, 1989 Opinion by the United States Court of Appeals for the Third Circuit affirming the District Court dismissal of this action is set forth in the Appendix to the Petition as "Appendix A-1".

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

Whether Petitioner Thurman V. Whitfield has set forth any basis for review of the Circuit Court Order affirming the District Court decision dismissing this action as "frivolous."

STATUTORY PROVISIONS INVOLVED

The Petition sets forth (at pages v. - vi.) the statutes which Petitioner believes are relevant to the instant Petition. It is Respondents' contention, however, that none of these statutes have any bearing upon the questions before this Honorable Court.

COUNTERSTATEMENT OF THE CASE

Thurman V. Whitfield initially brought suit against Colin A. (Topper) Carew, Norman Lear, and several related entities in the Eastern District of New York in 1981 in connection with a television script which he allegedly submitted and which, he contended, was improperly used in connection with a television series. After Whitfield withdrew or the Court dismissed all but his implied contract claim in that original action and the presiding judge therein granted defendants' motion therein for summary judgment, the Second Circuit Court of Appeals reversed the District Court's finding of "no similarities" because defendants' scripts were not part of the record and remanded the matter to the District Court for a comparison of Mr. Whitfield's submission with the scripts of defendants' television show. Defendants thereupon renewed their motion for summary judgment in 1986, seeking a dismissal of Whitfield's remaining implied contract claim for lack of similarity.

The instant action is the *fourth* action commenced by Petitioner Thurman V. Whitfield during the pendency of that

second summary judgment motion in the original action. Mr. Whitfield commenced two such actions in the Southern District of New York against Respondents Lear, Carew and various related parties relating to the events transpiring in that original lawsuit. The second such action was dismissed *sua sponte* by the Hon. Judge Brieant as duplicative. The first such action was subsequently withdrawn by Whitfield without prejudice.

Mr. Whitfield also commenced two actions in the Eastern District of Pennsylvania relating to the same original claims. The first such action was transferred on motion to the Eastern District of New York for consolidation with the original action pending before the Honorable I. Leo Glasser. Judge Glasser has since granted the motion for summary judgment by the defendants in the original action on Whitfield's remaining claim therein. As such, the first Eastern District of Pennsylvania action transferred to New York, which is based upon the events surrounding the original action, is ripe for a motion to dismiss.[1]

The second Eastern District of Pennsylvania action is the instant case. The Honorable James Giles of the Eastern District of Pennsylvania, in response to a motion by Respondents herein setting forth both the inherent similarities between this action and the various earlier lawsuits brought by Whitfield, and the total absurdity of the claims asserted herein by Whitfield, granted Respondents' motion to dismiss this action as "frivolous". The Third Circuit Court of Appeals, upon review of all prior proceedings both herein and in all of the other aforementioned actions, affirmed that dismissal and awarded costs against Whitfield.

The instant Petition for Certiorari is nothing more than a continuation of Whitfield's ongoing pattern of harassment. Without identifying (or incorporating herein) any aspects of his complaint or the purported statutory basis for seeking relief from this Honorable Court, Whitfield makes wild and unsubstantiated

---

[1] Counsel is presently preparing a motion to dismiss that action on behalf of various defendants therein.

accusations against the Respondents herein and the various Court employees and officials that he has encountered through his various litigations. Since there is clearly no merit to Whitfield's reckless allegations and since he has not set forth any basis upon which this Court may even consider his case, Respondents Colin A. (Topper) Carew, Alyce Carew, Norman Lear, Golden Groove[2], Act III Communications, Inc.[3] and The Coca-Cola Company[4] therefore respectfully request that the instant Petition be dismissed.

---

[2] Respondent Golden Groove, which is incorrectly referred to by plaintiff as Golden Groove Productions, Inc., has no parent or subsidiary company within the meaning of Supreme Court Rule 29.1.

[3] Respondent Act III Communications, Inc. has no parent or subsidiary company within the meaning of Supreme Court Rule 29.1.

[4] Respondent The Coca-Cola Company sells its soft drink syrup and concentrate in the United States to bottlers in licensed territories, including bottlers which are subsidiaries or divisions of Coca-Cola Enterprises, Inc. Several domestic bottlers are jointly owned by The Coca-Cola Company and independent interests. In addition, The Coca-Cola Company has a significant ownership interest (less than 100% ownership) in each of the following companies: Coca-Cola Enterprises Inc.; T.C.C. Beverages Ltd.; Amatil Limited; Johnston Coca-Cola Bottling Group, Inc.; and, Coca-Cola Bottling Consolidated.

ARGUMENT

I.

PETITIONER HAS NOT SET FORTH ANY BASIS UPON WHICH THIS COURT MAY GRANT HIS PETITION FOR WRIT OF CERTIORARI

As he has done in all prior litigations and in the earlier stages of this litigation, Whitfield utilizes the instant petition to make accusations concerning the conduct of the defendants in his original Eastern District of New York action (Norman Lear, Topper Carew and related entities), the attorneys of record in that original action (including Stephen F. Huff, Pryor, Cashman, Sherman & Flynn, and Carl Person) and various court employees involved in his various litigations (including Robert Heinemann, Clerk of the Eastern District of New York), some of whom are not even parties hereto, in order to create the impression that there is some vast "conspiracy" ongoing for the sole purpose of cheating Petitioner and of depriving him of his day in Court. However, because Whitfield has failed to even set forth a basis upon which his petition should be considered, certiorari should be denied.

The Judge presiding over this action in the United States District Court for the Eastern District of Pennsylvania, the Honorable James Giles, seeing that this action is entirely lacking in merit and is a mere repetition of the various other litigations previously brought by Petitioner Whitfield, granted defendants' (respondents') motion to dismiss this action as "frivolous". The United States Circuit Court of Appeals for the Third Circuit affirmed Judge Giles' decision and awarded defendants (respondents) their costs of defending Whitfield's appeal. The instant Petition for Certiorari should likewise be denied because it too is frivolous.

Aside from the fact that most of the Petition herein makes little or no sense, Whitfield has not even attempted to set forth any reason why this Court should use its discretionary power to review the Third Circuit's holding. The entirety of his "Statement

of the Case" merely purports to set forth some of the historical background of Whitfield's repetitive lawsuits. The section of the Petition entitled "Reasons for Allowing the Writ" devotes seventeen pages (from page 5 through page 22 and page 29) to the alleged problems Whitfield has encountered in his various lawsuits.[5] Even Whitfield's discussions of "RICO", the "Standard of Proof" and "Due Process and Civil Rights" do not set forth the issues this Court must address or the supposed errors by the lower courts which would justify this Court taking any action. Whitfield has merely sprinkled a few irrelevant legal concepts into what he has called a "Petition for a Writ of Certiorari," and has asked this Court to figure out why his application merits consideration. The only conclusion that may be drawn is that the instant Petition is itself frivolous because it totally fails to set forth a basis for review of the Third Circuit's decision.

---

[5] Whitfield also appears to take issue with the procedural handling of his case at the Third Circuit. (See pages 15-22.) His discussion of these matters, however, like his other contentions, is unconnected to any issues that can be addressed by this Court.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that Whitfield's Petition for a Writ of Certiorari be denied.

STEPHEN F. HUFF
Counsel of Record
PRYOR, CASHMAN, SHERMAN & FLYNN
JAMIE M. BRICKELL
On the Brief
Counsel for Respondents
410 Park Avenue
New York, New York 10022
(212) 421-4100

Supreme Court, U.S.
FILED
MAR 20 1990
JOSEPH F. SAPNIOL, JR.
CLERK

No. 89-1254

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

THURMAN V. WHITFIELD

Petitioner,

V.

THE COCA-COLA COMPANY,

COLIN A. TOPPER CAREW,

ALYCE G. SPROW,

GOLDEN GROOVE PRODUCTIONS, INC.,

NORMAN LEAR,

ACT III COMMUNICATIONS, INC.,

FREDERICK C. TIMM, ESQUIRE,

Respondents.

SUPPLEMENTAL BRIEF

THURMAN V. WHITFIELD

5024 Cedar Avenue

Philadelphia, PA 19143

(215) 747-4854, PRO SE

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Are these "new intervening matters" of the Clerk's letter and the "late" conformed order, submitted one and two months after the Opinion of The Third Circuit Court of Appeals, attempts to justify activities alleged to be of "wanton gross negligence" in processing the appeal?

2. Did the Third Circuit err in affirming Clerk's orders granting appellees leave to file a "supplemental appendix" containing fifteen (15) exhibits from other forums with other defendants not heard or in i n the record of the District Court?

3. How could all four (4) copies of the entire District Court record (194 pages) submitted as Appellant's Appendix be missing from the Clerk's Office (no file copy) on November 17, 1989, ten (10) days before appellant's reply brief is due? Are these activities not a repeat of the same "patterns and practices" employed in the Eastern Districts of New York and Pennsylvania?

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OPINIONS BELOW

The Opinion by the United States District Court for the Eastern District of Pennsylvania dismissing the instant action, is at Appendix "A" in the Appendix to the Petition, dated July 25, 1989.

The Opinion by the United States Court of Appeals for the Third Circuit, affirming the District Court dismissal is at Appendix "A-1" in the Appendix to the Petition, dated December 22, 1989.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

STATUTORY PROVISIONS INVOLVED

The Petition sets forth (at pages v-vi) the statutes relevant to the Petition and the one predominant issue herein and throughout nearly nine years of litigation is an unmitigated and blatant fraud against legal and due process in the United States Federal Courts, supervised by this Court's dictate.

CONSTITUTIONAL PROVISION

The Constitutional Provision which this case involves is adequately set forth in the Petition (page iv) and under "RICO and Civil Rights" allegations of fraud and conspiracy, a denial of "due process of law" and "the equal protection of the law", is a violation of the Fourteenth Amendment to the Constitution and of RICO and Civil Rights statutes.

STATEMENT OF THE CASE

A concise statement of the case and of the events leading to this instant action are related (pages 1-4) in the Petition.

The events in this action forcing plaintiff to seek the power of this Court's "supervision" is the deliberate "practice and a pattern" of tampering, fraud, and diversion of plaintiff's submissions to the Court, and this sham became rampant after plaintiff won a reversal in the 2nd Circuit Court of Appeals (751 F.2d 90). New "intervening matters" in support of the above are attached as "Appendices, A, B, B1, and Appendix C".

ARGUMENT

I

In seeking "due process and equal justice" in the Third Circuit Court Clerk's Office plaintiff submitted a letter to the Circuit Executive"s Office on the day his "Emergency Motion" was filed that clearly defined the delay and deceipt encountered by plaintiff in submitting his motions to the court in the belief that this office would observe that the Court Rules be adhered to, and that this motion would be properly submitted to the court, see "Appendix I" to Petition.

On January 29, 1989, plaintiff received a copy of a letter from Clerk Mrvos to Circuit Executive, John P. Hehman which addressed an alleged "complaint of staff misconduct filed in Appeal No. 89-1677" Whitfield v. Coca Cola Company, "Appendix A" hereto.

In correction, Appeal No. for the above action is, 89-1667, not 89-1677, as the clerk well knows and therefore the Clerk's let-

ter will not be filed in the correct case file (if it can be filed) one month after this action was affirmed in the Opinion of the Third Circuit Court of Appeals on December 22 1989.

The only document "filed" was the "emergency motion" on December 18, 1989 pursuant to Third Circuit Rules; Internal Operating Procedure, Chapter 10(A)(2) "as requiring panel action on the same day as motion is filed" but, the motion was never submitted to the Court and the Clerk decided to send a letter citing "complaint of staff misconduct" which is false and incorrect (see pages 20-21 to the Petition.

The "emergency motion" clearly specifies gross negligence and misconduct by the Clerk's office in collaboration with defendant's attorney's, and by Clerk's unauthorized order, appellee's filed a supplemental appendix, cosisting of complaints, documents and defendants not in the lower Court record see (pages 17-18) and "Appendix G" to the Petition.

In Clerk Mrvos letter at paragraph 2, it states "Even assuming, arguendo, that the subject matter of the disputed orders was mistakenly categorized as being procedural, complainant was not prejudiced by the entry of the Clerk's orders because they were independently reviewed by the Court."

If Clerk Mrvos is correct, and the Third Circuit Court of Appeals affirmed the Clerk's orders granting leave to file a supplemental appendix consisting of 127 pages that are not part of the District Court record, never submitted to or reviewed therein, then Petitioner respectfully submits that the Third Circuit Court of Appeals is in error.

How can one appeal that which has never been heard or decided? Webster's Dictionary, states an appeal in law "a transference of a case to a higher Court for rehearing."

Plaintiff must again contend, there is no transfer to the higher Court for a "reh-

earing when there was no primary hearing or case to transfer.

Clerk Mrvos letter states that plaintiff was not prejudiced, if the appendix was "mistakenly categorized as procedural" but, plaintiff has received a bill of cost for a total of Five Hundred Eighty Seven Dollars, and Thirty four Cents ($587.34) of which appellees incorrect supplemental appendix is Five Hundred & Twenty Four Dollars ($524.00) so plaintiff feels very much "prejudiced" by the bill and gross negligence in the processing of the record which continued, unabated as Clerk Mrvos letter verifies at paragraph 3: "Finally, complainant alleges misconduct, and tampering with the record as a result of the inability of the Clerk's office to produce any copies of complainant's appendix on, November 17, 1989", see (pages 19-20) and "Appendix H" in the Petition which verifies the Clerk's violation of the Clerk's own order, and these strange activities continued.

On February 24, 1989, plaintiff received a letter from the Third Circuit Court of Appeals with an order stating that, Appellant's Motion is denied. The letter clearly states that it is a "conformed copy", Submitted on 11-24-89 merits, see "Appendices B-B1 and C". This motion was already denied once.

Is plaintiff to beleive that this order denies his "Emergency Motion" that was never submitted to the Court? The motion is dated, December 11, 1989 but it was not filed until December 18, 1989, "Appendix I" to Petition.

CONCLUSION

By misappropiating plaintiff's script, Boomerang defendants Lear and Carew fraudulently obtained 8 million dollars in federal funds, and this is specified, in the record and is the catalyst for this continuing fraud in the United States Federal Courts that the granting of this Petition will stop.

Respectfully submitted,

5024 Cedar Avenue
Phila, PA 19143
(215) 747-4854

Thurman V. Whitfield
Pro Se

"APPENDIX A"

Office of The Clerk

UNITED STATES COURT OF APPEALS

For The Third Circuit

SALLY MRVOS
Clerk

January 23, 1990

Mr. John P. Hehman
Circuit Executive
Third Circuit Court of Appeals
21613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Mr. Hehman:

I am responding to the complaint of misconduct filed in Appeal No. 89-1677 Whitfield v. Coca Cola Company. The complainant alleges: (1) that the proper procedure in distributing a motion which he designated as an "emergency" motion was not followed, (2) that two orders were improperly entered by the clerk and (3) that the Clerk's Office tampered with the record and failed to make a copy of his appendix available for his review. I have investigated this matter and will

respond to each of these separately in the paragraphs below.

1) The complainant first alleges that the rules were violated when he was not p-ermitted to "deliver by hand" copies of a-n "emergency" motion requiring panel acti-vity on the same day as the motion was fi-led. It appears that the complainant has m isapprehended Third Circuit Internal Oper-ating Procedure IOP Chapter 10(A)(2)..... the rule provides that the Clerk may requ-ire that the movant hand serve a motion by delivering it to the chambers.....but this rarely occurs and only when circumstances warrant.....This was not a situation which required that the motion be hand served.

2) The complaintant in his statement that the "Clerk granted two unauthorized motions," is alleging that the October 27, 1989 and the October 31, 1989 orders entered by the Clerk were improper. The October 27, 1989 order granted appellee's leave to file

a supplemental appendix and the October 31, 1989 order was entered when complainant filed an Affidavit in Opposition to the appellee's motion to file a supplemental appendix...and it noted his opposition and affimed the order .....Contrary to Mr. Whitfield's assertions, entry of these orders did not constitute an abuse of process..... even assuming arguendo, that the subject matter of the disputed orders was mistakenly categorized as being procedural.....since the Court's orders affirmed the prior orders by the clerk.

(3) Finally, complainant alleges misconduct and tampering with the record as a result of the inability of the Clerk's office to produce any copies of complainant's appendix on November 17, 1989.....because it had been either misfiled or otherwise misplaced. The three additional copies..also could not be produced...because they had been transmitted to the Court. A...substitute

copy has been made...is in the Clerk's file and available for the complainant's inspection.....on the basis of my investigation I conclude that there is no merit to any of the complainant's allegations.....

Very truly yours,

Sally Mrvos, Clerk

cc: Complainant
Subject of Complaint
Senior Staff Attorney

(FOOTNOTE)

This letter was received well after this plaintiff's Petition was drawn up, two days before it was filed, and over one month after the Opinion of The Third Circuit Court of Appeals affirmed dismissal. The Clerk's letter never states what became of plaintiff's "emergency" motion, and "this is not a situation that required the motion to be hand served". If an "emergency" motion alleging misconduct and Fraud Upon The Court is not an "emergency" (4 days before the decision) then the rule is useless as plain-

(FOOTNOTE) "APPENDIX A"

tiff addressed Rules of the Third Circuit, Internal Operating Procedures, Chapter 10 (A)(2) Motion Practices; at (pages 20-22) in the Petition. Clerk's letter at paragraph (2) alleges that "plaintiff was not prejudiced, if the Clerk's orders were a mistake in granting appellee's leave to file a supplemental appendix" and plaintiff has addressed that issue at (pages 3-4) hereto, and Clerk's letter at paragraph (3) refers to plaintiff's allegations of "misconduct and tampering" because all four (4) copies of the appendix (194 pages, the complete Court record) were missing and could not be found, not even the file copy, see (pages 19-20, and "Appendix H' to the Petition. The Clerk's letter verifies each allegation by the plaintiff of "gross negligence and abuse of process" by wanton and deliberate activities that will cease, only if this Court exerts the power of its Supervision.

"APPENDIX B"

UNITED STATES COURT OF APPEALS

For The Third Circuit

Sally Mrvos
Clerk

February 20, 1990

Re: Whitfield vs. Coca Cola Co. et al

No. 89-1667

Dear Counsel:

Enclosed herewith is conformed copy of Order filed today in the above entitled case.

Very truly yours
Sally Mrvos, Clerk

By: _____
M. Elizabeth Ferguson

Cheif Deputy Clerk

Direct Dial 597-8465

bj
enc
cc: Mr. T.V. Whitfield

J.M. Brickell,Esq.

"APPENDIX B1"

UNITED STATES COURT OF APPEALS FOR THE

THIRD CIRCUIT

No. 89-1667

WHITFIELD, THURMAN V.
vs.
THE COCA COLA COMPANY, et al.
(E.D. PA Civil No. 89-4299)

Present: HIGGINBOTHAM, MANSMANN and COWEN,

Circuit Judges.

Motion by Appellant Pro Se that Sanctions Double Damages and Costs be Imposed upon Appellees.

Submitted on 11-24-89 Merits.
Gretchen A. Thompson
Deputy Clerk 7-1092

ORDER

The foregoing Motion is Denied

By the Court,

A. Leon Higginbotham
Circuit Judge

Dated: FEB 20 1990

"CONFORMED ORDER"

"APPENDIX C"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 89-1667

Whitfield, Thurman V. Appellant
vs.
The Coca Cola Company, et al.
(E.D. PA Civil No. 89-4299)

Present: HIGGINBOTHAM, MANSMANN and COWEN, Circuit Judges.

Motion by appellant requesting sanctions, damages, and double costs be imposed upon appellees for unreasonable and vexatious inclusions of unnecessary material in their supplemental appendix, pursuant to F.R.A.P. Rule 30(b), 38, 27(a)(b) & (c), and to Court Rule 2(4) and 11(5).

Debra Rush
Deputy Clerk 7-5019

Appellee supplemental appendix filed 10-27-89
Case listed for disposition on the merits on, 11-24-89.

ORDER

The foregoing Motion of appellant is Denied.

By the Court,

A. Leon Higginbotham
Judge

Dated: Dec 18 1989
GT/cc: TVW
JMB

"ORIGINAL ORDER"

"APPENDIX C"

(FOOTNOTE)

The original order above denying plaintiff's Motion clearly specifies the F.R.A.P. Rules cited in the motion. In the new conformed order ("Appendix B1") the Federal Rules of Appellant Procedure have been removed and this was done two (2) months after the Opinion affirming dismissal on December 22, 1989, and plaintiff has cited these "new intervening matters" as supporting his allegations of "gross negligence" in an ongoing practice and pattern of deceit and diversion initiated by a "corrupt cabal" in New York, to protect "defendant's Lear and Carew (his minority front) who fraudently obtained eight (8) million dollars in federal funds for TV production through misappropiation of plaintiff's script "Boomerang" (original action) and this obscenity to rule of law and the federal judiciary calls for the exertion of this Court's power of supervision, otherwise justice will be denied.